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Hampshire. *Dartmouth College v. International Paper Co.*, 132 Fed. Rep. 92. It is there suggested that though the damages are *prima facie* to be determined by the usual rule, yet the *bona fide* converter has by his labor acquired a property right in the article which entitles him to recoup. Whether the expense to which he has been put or the increase in value which he has created, is the measure of this right is in dispute. The basis of the recoupment is quasi-contractual. The fundamental requisite in quasi-contract, the unjust enrichment of the party against whom the claim is made, undoubtedly exists here. An express request that the service be rendered is not required; and the argument that one should not be permitted to thrust himself upon another as his creditor is met by the circumstance that in cases of this kind the converter has simply used the property for the purposes for which it was naturally intended. Where this is not true, or where the owner has special reasons for wanting his property preserved in its original condition, the quasi-contractual grounds fail, and the general rule should be applied.²

The *mala fide* trespasser is usually denied the right of recoupment because in order to establish it he would have to show his own wrong.³ A *bona fide* purchaser from a *bona fide* trespasser may assert the right.⁴ The rights of an innocent purchaser from a *mala fide* trespasser are, however, most difficult of adjustment. Under the strict rules of the common law it is impossible to grant him any relief.⁵ The suggestion that he receives from his vendor a right which the latter could not enforce, seems to involve the establishment of an exception to the general rule that the assignee can acquire nothing from his assignor which the latter did not possess. But, clearly, upon broad principles of justice he is entitled to the value of the trespasser's labor. Though he has not himself done the work upon the property converted, he has paid for that work, and it is he who bears the expense of the unjust enrichment of the original owner. In other cases where the legal remedy in quasi-contract is unavailable, equity gives relief. For example, in the analogous case of improvements made upon land under a *bona fide* mistake as to title, a bill in equity to recover the value of the improvements has been sustained.⁶ If the right to such relief could be established for the innocent purchaser in equity, he might, upon the analogy of equitable defenses at law, be permitted to avail himself thereof by way of recoupment in an action at law.⁷

RESTRICTION OF THE POWER OF ASSIGNMENT. — Whether the maker of a note can restrict its assignment in the hands of the payee by inserting words of non-assignability, seems never to have been squarely decided. A recent *dictum* by the Court of Appeals of Missouri, however, holds that such expressions are ineffectual except to make the note non-negotiable. *Herrick v. Edwards*, 81 S. W. Rep. 466. The court relies on the analogy of the rule against restraints on the alienation of land and chattels; but plainly there is a distinction between the absolute transfer of a chattel and

² See *Isle Royale Mining Co. v. Hertin*, 37 Mich. 332.

³ *Ellis v. Wire*, 33 Ind. 127; but see *Single v. Schneider*, 30 Wis. 570.

⁴ *White v. Tawkey*, 108 Ala. 270.

⁵ *Wooden-Ware Co. v. United States*, 106 U. S. 432.

⁶ *Bright v. Boyd*, 1 Story (U. S. C. C.) 478; *Keener, Quasi-Contracts* 379.

⁷ *Cf. Railroad Co. v. Hutchins*, 32 Oh. St. 571, 37 Oh. St. 282.

the creation of a chose in action, for in the one case the transferor loses at once all interest in the *res*, while in the other the obligor remains vitally interested, since he must meet the obligation. Upon this peculiar feature of choses in action, the common law idea that they could not be assigned probably rested. A promise to pay A was a promise to pay A only, and could not be made into a promise to pay B except with the consent of the promisor. To assign an obligation was to change it, and the early lawyers were unable to see how the promisor could be held liable on such an altered contract. Difficult as it was to escape the logic of this argument, mercantile convenience soon demanded transferability of certain kinds of obligations. Since the obligor's right to do only what he promised was the main objection to assignment, the old conception naturally gave way most rapidly in the case of promises to pay money, for the transfer of such an obligation could make little or no difference to the promisor.¹ Assignment even here was effected by giving to the assignee a power of attorney to collect the note in the name of the promisee. Although the assignee finally acquired the right to collect in his own name, it is suggestive of the true nature of assignment that his rights have still to be worked out through the assignor, so that, although a purchaser for value and without notice, he takes subject to all equities in favor of the maker.² So jealous of the latter's rights has been the law that even when perfect negotiability of notes was obtained by statute, it was confined to those on which the maker by words of negotiability had shown an express intention to make his promise general.³ The growth of the assignability of contracts, other than promises to pay money, further illustrates the theory that the principal factor in determining whether a contract is assignable is whether it could make any difference to the promisor to perform to any other than the original promisee. Thus, while ordinarily the consent of the contractor to assignment is virtually presumed, if the contract involves reliance on the personal services of the promisee it clearly cannot be assigned.⁴ It would seem, therefore, on principle, that a note should not be regarded as assignable contrary to an express declaration of the maker, unless mercantile convenience demands that a promise to pay money to "A only" shall be considered a promise to pay the whole world.⁵

BILLS OF LADING AS SECURITY FOR ADVANCES. — The possession of a bill of lading has from early times been universally held to determine the possession of the goods themselves.¹ In a similar manner the position of one who takes a bill of lading in his own name as security for advances depends upon the extent to which the form of the bill should operate to determine the title to the goods. Upon this point there is by no means the same agreement. The view taken by the courts² is that a bill of lading does or does not pass legal title according to the intention of the parties, its form being merely evidence of such intention. The view of merchants, on the other hand, considers the form of the bill as conclusive evidence of legal title. In de-

¹ 3 HARV. L. REV. 340.

² *Edge v. Bumford*, 31 Beav. 247.

³ 3 & 4 Anne, cap. ix. §§ 1-3.

⁴ *Swarts v. Narragansett Electric Lighting Co.*, 59 Atl. Rep. 77 (R. I.).

⁵ See *Edie & Laird v. East India Co.*, 1 Black. W. 295, 298.

¹ *Evans v. Marlett*, 1 Ld. Raym. 271.

² *The Carlos F. Roses*, 177 U. S. 655; *Moakes v. Nicolson*, 19 C. B. (N. S.) 290.